APPENDIX A — PER CURIAM OPINION OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION DATED, DECIDED AND FILED JUNE 23, 2000

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-238-97T5

CARROLL CHRISTY,

Plaintiff-Respondent,

v.

DOUGLAS SLOAN,

Defendant-Appellant.

Argued June 1, 2000 — Decided JUN 23 2000

Before Judges King, Carchman and Lintner.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Cumberland County.

* * *

PER CURIAM

Defendant, Douglas Sloan, appeals the denial of a motion seeking an order from the Family Part reversing the permanent restraining order and civil conviction of domestic

violence, dismissing the domestic violence complaint with dissolution of the *ex parte* restraining order issued in conjunction with same, or alternatively granting a new trial with respect to that domestic violence complaint. Defendant based his motion on *N.J.S.A.* 2C:25-29(d) or *R.* 4:50-1(a), (b), (c), (d), (e) and (f). We affirm Judge Testa's order denying defendant's motion.

On June 30, 1996, plaintiff, Carroll Christy, filed a domestic violence complaint alleging harassment against defendant. A temporary restraining order (TRO) was issued on the same day. An indictment for stalking, based on the same events alleged in the domestic violence complaint, was returned against defendant on August 6, 1996. The indictment was dismissed on February 14, 1997, as a result of a finding that the grand jury had received erroneous instructions. Defendant, a Canadian citizen and resident, was served with the TRO on July 3, 1996, and after a hearing on July 10, 1996, Judge Testa entered a final order, restraining defendant from contact with the victim, her family members and her business associates.

Judge Testa found from the evidence that defendant had written several letters and made telephone calls with the purpose of harassing plaintiff after she advised him that she no longer wanted to see him or hear from him. Judge Testa also concluded that defendant, though he appeared pro se, had obtained advice from attorneys both in Collingswood, New Jersey and Canada. On June 27, 1997, nearly a full year after the order was entered, defendant filed a motion for a new trial or to reconsider and reverse the final restraining order of July 10, 1996. On July 25, 1997, Judge

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Testa denied defendant's motion, as well as plaintiff's cross-motion for counsel fees. Defendant appeals, raising the following points:

POINT I — THE TRIAL JUDGE'S DENIAL OF THE RECONSIDERATION/NEW TRIAL MOTION UNDER *R.* 4:50 WAS AN ABUSE OF DISCRETION. THE SIMILAR DENIAL OF THE DISSOLUTION MOTION UNDER *N.J.S.A.* 2C:25-29(d) ON THE SOLE BASIS OF FEAR BY THE PLAINTIFF WAS LIKEWISE ERROR.

POINT II — BECAUSE OF THE TRIAL COURT'S FAILURE TO ACCORD ASSISTANCE AND TO ADVISE THE DEFENDANT, INTER ALIA, OF HIS RIGHT TO COUNSEL, THIS DEFENDANT, A CANADIAN CITIZEN, COULD NOT ADVANCE, ALTHOUGH IMPLICIT IN HIS PRO SE PROTESTATIONS, A DEFENSE AS WELL AS THE CONSTITUTIONALLY PRIVILEGED NATURE OF HIS CONDUCT.

POINT III — THIS DEFENDANT'S COMMUNICATIVE CONDUCT IS NOT PROSCRIBED BY THE LANGUAGE OF THE HARASSMENT STATUTE *N.J.S.A.* 2C:33-4 OR, ALTERNATIVELY, BY THAT STATUTE WHEN APPROPRIATELY CONSTRUED SO AS TO AVOID CONSTITUTIONAL INFIRMITY.

POINT IV — THIS DEFENDANT'S CONDUCT IS NOT GOVERNED BY NEW JERSEY'S

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DOMESTIC VIOLENCE ACT, *N.J.S.A.* 2C:25-17 ET SEQ. AND, IF SO VIEWED, THAT LEGISLATION IS SIMILARLY INVALID UNDER A FEDERAL OR STATE CONSTITUTIONAL ANALYSIS.

POINT V — THE DOMESTIC VIOLENCE ACT PROCEDURES AND STANDARDS (*N.J.S.A.* 2C:25-29) VIOLATE FEDERAL AND STATE CONSTITUTIONAL GUARANTEES OF DUE PROCESS. THIS DEFENDANT'S DUE PROCESS RIGHTS WERE ALSO VIOLATED BEFORE, DURING AND AT THE CONCLUSION OF HIS DOMESTIC VIOLENCE HEARING.

We have carefully reviewed the entire record in light of defendant's arguments and conclude that the issues presented have insufficient merit to warrant further discussion in a written opinion. *R.* 2:11-3(e)(1)(E). We are compelled, however, to make the following additional observations concerning the timeliness of defendant's motion for reconsideration given the nature of the contentions raised.

In *Wausau Ins. Co. v. Prudential Property & Casualty Ins. Co.*, we said that "[i]t is well established that an [sic] *R.* 4:50 motion may not be used as a substitute for a timely appeal." 312 *N.J. Super.* 516, 519 (App. Div. 1998) (citing *Di Pietro v. Di Pietro*, 193 *N.J. Super.* 533, 539 (App. Div. 1984)). Here, all of defendant's contentions are based upon alleged error which occurred at the original trial, from which defendant argues relief should have been granted almost one year later under subparts (a) through (f) of *R.* 4:50-1.

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Defendant misconstrues the purpose of the rule. It is not intended to be used "to convert 'trial error' from which an appeal must be taken within 45 days into a 'mistake' which may be corrected within one year." *Ibid.* (citing *Hodgson v. Applegate*, 31 *N.J.* 29, 36-37 (1959)). In short, *R.* 4:50-1 "is not a substitute for appeal." Pressler, *Current N.J. Court Rules*, comment 1.2 on *R.* 4:50-1(a) (1999) (citing *Wausau, supra*, 312 *N.J. Super.* at 519)). Nor does the rule relieve a party from the twenty-day requirement for the filing of a motion for a new trial, *R.* 4:49-1, or reconsideration, *R.* 4:49-2. *See Wausau, supra*, 312 *N.J. Super.* at 519 (citation omitted).

Defendant's motion also sought relief under *N.J.S.A.* 2C:25-29(d), which provides for the dissolution or modification of final domestic violence restraints based upon a showing of good cause. *N.J.S.A.* 2C:25-29(d), like *R.* 4:49 and *R.* 4:50-1, does not afford relief from a final judgment of domestic violence based upon trial error alleged to have occurred at the hearing which gave rise to the order. Defendant is required to come forward with evidence of "good cause."

Here, again, defendant based his entire argument for relief under *N.J.S.A.* 2C:25-29(d) on various instances of alleged error occurring at the original trial adjudicating him guilty of domestic violence. The record is barren of any facts establishing good cause for dissolution based upon any changed circumstances. The only evidence pertinent to the inquiry was presented in plaintiff's certification which revealed that she continues to be terrified of defendant, whom she believes is obsessed with having physical contact, and

that no change of circumstances has occurred since entry of the final order. We conclude that Judge Testa's reliance on plaintiff's certification was appropriate given the complete absence of proof establishing "good cause" on behalf of defendant.

Affirmed.

APPENDIX B — EXCERPTS FROM TRANSCRIPT OF MOTION FOR RECONSIDERATION HEARING OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, CUMBERLAND COUNTY DATED JULY 25, 1997

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CUMBERLAND COUNTY

DOCKET NO. FV-06-115-97
A.D.#_____

CARROLL CHRISTY,

Plaintiff,

vs.

DOUGLAS SLOAN,

Defendant.

TRANSCRIPT OF MOTION FOR RECONSIDERATION HEARING

Place: Cumberland County Courthouse
Broad and Fayette Streets
Bridgeton, New Jersey

Date: July 25th, 1997

BEFORE:

THE HONORABLE JOSEPH P. TESTA, J.S.C.

* * *

Appendix B

[30] Colloquy

* * *

THE COURT: Thank you, Mr. Morris, you did a wonderful job.

Mr. Russell, you did a wonderful job. You didn't say anything, but did a wonderful job and I really don't need to hear from you unless you want to.

[31] In this matter, the court has looked at this and taken great pains to look at this. This is something that I see coming forward frequently in the future and I will get the legislative history on that and I will venture to guess today, and it's pure guess, there will be nothing on that particular Paragraph C that we talked about.

There has not been an appeal for the 45 day period pursuant to the rules. No motion for reconsideration, no appeal pursuant to the rules. Obviously, they are out of time. It comes down to two things.

Under 4:50-1A to F, do I have a basis to reopen this? And under 2C:25-29D, do I have a basis to reopen this? And, thirdly, probably the most important of all, for constitutional reasons, due process, do I have a reason to reopen this?

I have to take all that and analyze it one at a time. And I will try to do so in a quick fashion.

First of all, I don't believe that any of the arguments, as novel as some of them are, fit under 4:50-1A to F.

(E), I believe, deals with civil. (D), I believe, deals with civil. I don't believe any of the arguments put forth basically qualify under that. But if they do, I believe the proper issue would have been addressed by a appellate decision on an appeal to that appellate decision basically on the fact that the judge erred in Cumberland County on July 10th, 1996.

I don't feel that any of these paragraphs under our [32] rules qualify. I don't believe that any argument has been applied that qualifies as appropriate under that. I think all of the new defenses raised by defendant here today through his briefs and his argument, and I believe I characterized some of those as definitely new defenses, I didn't have the Grand Jury transcript. I did not — he did not have the assistance of counsel. He did not have the assistance of someone helping him fill out any answer to this.

These are new defenses. Plus, they are raising the issue of *Cesare* and *State versus Hoffman* and these are cases that have come subsequent to the hearing. I believe basically that all these defenses basically were not before me at that time and are, therefore, because the law has changed, because the argument raised now, I believe basically at this point in time they were waived at that time for not putting forth that argument.

I believe the only issue before this court is: Do I have a basis under 2C:25-29D to reopen this particular case? I have read all of the voluminous papers in here and I can analyze Judge Dilks' decision in Somerset County as coming down to 11 factors, but in reality, there is one important factor and that's Factor Two.

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Whether we like it or not, whether we agree with it or not, it's not the issue. The issue is that the domestic violence statute was created as a quasi-criminal statute with [33] civil burdens. It was created to protect victims. I can honestly say that in our particular county that the large majority of the case before this court are really domestic violence. They are not the "infantile tweaking." Sure we have them on a given day. We have the tweaking coming on often. But the percentage of the cases — in the very large percent are real domestic violence.

As I move around the state, I learn that that is not the case wherever we go. But in our particular area for many reasons we need not discuss, nevertheless, we have problems. And in this particular arena, as so to speak, where the court sees these constant problems and see now more clearer than ever the creation of the domestic violence statute, the reasons for the procedures in the domestic violence statute, the reasons why it has a civil burden, the reasons why even though it's in a criminal code it's been given the civil burden. The reason why some of the safeguards are on the side of the victim, rather than on the side of the defendant.

But, nevertheless, I think in a balancing test of the constitutional rights of the victim or defendant, it all balances out and we come down to one key factor: Victim's fear of defendant. And the court finds at this particular point in time that she still is in fear of the defendant. She uses the word "terrified." Whether that is the proper word or not, nevertheless, there is a legitimate fear. She believes that [34] there is absolutely no real reason for him to want this dissolved. Those reasons are not necessary for the court to address.

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Based upon the fear, based upon the other factors that cannot properly be addressed by this court as having the defendant's having — defendant having filled out basically a basis for each one of those factors, nature and relationship, contempt convictions, alcohol, drug involvement, other counseling. I don't think the court needs to get to that. I don't see where the defendants has put forth any basis under that.

But, more importantly, I don't think it's important. What I think is important is as long as I have a victim in fear, I need the restraining order to stay in place.

Accordingly, the motion is denied.

* * * *

APPENDIX C — EXCERPTS FROM TRANSCRIPT OF TRIAL OF THE SUPERIOR COURT OF NEW JERSEY, CHANCERY DIVISION – FAMILY PART, CUMBERLAND COUNTY DATED JULY 10, 1996

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION – FAMILY PART
CUMBERLAND COUNTY

DOCKET NO. FV-06-115-97
A.D.#_____

CAROL CHRISTY,

Plaintiff,

– v –

DOUGLAS SLOAN

Defendant.

TRANSCRIPT OF TRIAL

Place: Cumberland County Court House
Bridge & Fayette Streets
Bridgeton, New Jersey 08302

Date: July 10, 1996

BEFORE:

HON. JOSEPH P. TESTA, J.S.C.

* * *

Appendix C

[40] Decision

* * *

THE WITNESS: I want to hear it from her, sir.

THE COURT: Okay. Thank you, sir, I've heard enough.

This is a matter of Carol Christy versus Douglas Sloan. This is a charge under the Prevention of Domestic [41] Violence Act. The charge is harassment. Harassment is under our Criminal Code, is 2C:33-4. The acts before this Court probably would also fall under Stalking, although Mr. Sloan is not charged with stalking in this court.

THE WITNESS: I am, sir.

THE COURT: Sir, please don't interrupt me. I don't interrupt you, and when I did, I apologized.

THE WITNESS: I'm sorry, sir.

THE COURT: Stalking is not before this Court. What is before this court is harassment only. The allegation is that up to and including the 29th of June, that he contacted the victim by phone, by letter and eventually came to this country. I have marked into evidence Exhibits P-1 through P-17, P-17 being a statement of Mr. Sloan to the police department. As to P-1 through P-16, Mr. Sloan acknowledges that he wrote a series of letters that came back that were refused. He acknowledges that as to letters before the Court, that he did write those letters, as I read them into the record.

He acknowledges that they are in fact his signature. Therefore, the Court finds that to be credible evidence before the Court. The Court further finds that he acknowledges his signature on P-17, his statement to the police. I have reviewed all those documents. Obviously, I did not read every letter and every line of every letter, but I read enough to understand the intent and motive of those letters. There's no [42] doubt in the Court's mind. This is not a criminal court. In a criminal court, in order to find someone guilty, it must be beyond any reasonable doubt. In this court the burden is a preponderance of an evidence which means that the scale must tip, just from one side to the other, just slightly in order for the Court to find you guilty or not guilty. I am convinced, and the Court finds that the letters written, the phone calls, were made for the purpose to harass the victim in this matter, Carol Christy, it was made with that purpose, it was made — these communications to alarm her, it was made for the purposes to bother her, to annoy her, there's no doubt about that. He would not take no for an answer. I find also that Carol Christy, by herself, through her representatives, both the police department, Patrolman Morales, through the brother-in-law, that Mr. Sloan was told to have no contact, to stay away. There's no doubt that he hired an attorney very briefly for a consultation in Collingswood. There's no doubt that that attorney told him his best bet was to get out of the State, and I read that in Mr. Sloan's letter, I read that in Mr. Sloan's statement. Therefore, he had ample opportunity to have legal advice. He obtained legal advice, both from a Canadian attorney and from a New Jersey attorney that practices in the South Jersey area. There's no doubt from the statements that I've read and from the testimony of Mr. Sloan. The Court so finds that he understood what the laws

are in the State of [43] New Jersey, and the advice were get out of the state, get out of the country and don't bother her.

Mr. Sloan, on the other hand's, testimony is that he did not feel that he was bothering her, that he was harassing her in any fashion because he did not get a clear and decisive message that the relationship was over.

The Court finds that there was a clear and decisive message from Ms. Christy and from all of the representatives whose names are mentioned for the record, that the relationship was in fact over. Therefore, the Court finds Mr. Sloan guilty of the offense. The Court finds by a preponderance of the evidence, that Ms. Christy has established that guilt. Accordingly, the Court enters a final order of restraints.

You are to have no contact, Mr. Sloan, with her, by phone, by mail, by postcard, no flowers, no anything. No third party representatives. No personal contact. This lasts forever until she elects to dissolve it if she ever should elect. If she doesn't, it stays in existence until the end of time, do you understand what I said? Let me explain something to you. I have read all this. I have looked at all of this. This is serious. And I want to explain something very serious to you. I don't know about other judges, but I know about me. And on a first offense on a violation of a restraining order, from this day forward, if there is a violation of restraining order, I have the right to put you in jail, but it's not [44] mandatory. A second violation is mandatory, 30 days. So you should know that. But you should also know my personal philosophy, and in this particular case, I see a serious case. If you are charged with a violation of restraining

order, should you come before this Court, and should you be found guilty after all of the evidence, I will place you in the County Jail for first offense, do you understand that?

THE WITNESS: Yes, sir.

* * * *

APPENDIX D — FINAL RESTRAINING ORDER OF THE SUPERIOR COURT, CHANCERY DIVISION, FAMILY PART, CUMBERLAND COUNTY DATED JULY 10, 1996

STATE OF NEW JERSEY
PREVENTION OF DOMESTIC VIOLENCE ACT

SUPERIOR COURT, CHANCERY DIVISION,
FAMILY PART, CUMBERLAND COUNTY

(✓) Final Restraining Order (FRO)

* * *

DOCKET NUMBER: FV-06-000115 97-

In the Matter Of:

Plaintiff: CHRISTY, CARROLL J
Sex: F DOB: 07/19/1940

Defendant: SLOAN, DOUGLAS
Sex: M Race: CAUCASIAN DOB: 05/05/1941

* * *

Home: 321 NISLIA RD
THORNHILL ONTARI CANADA

* * *

Appendix D

Both Present

Victim's Witness Advocate appears in Court with Pl.

The Court having considered plaintiff's Complaint dated 07/02/1996 seeking an ORDER under the Prevention of Domestic Violence Act and having found good cause to believe that plaintiff's life, health, and well-being have been and are endangered by defendant's act(s) of violence:

It is on this 10th day of July, 1996, ORDERED that

PART I

RELIEF SOUGHT BY VICTIM

(X) (✓) Defendant is prohibited against future acts of domestic violence

(X) (✓) Defendant is barred from the following locations (DO NOT LIST VICTIM'S CURRENT PLACE OF RESIDENCE OR EMPLOYMENT except where the location is specifically known to the defendant:
All locations

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(✓) Defendant is prohibited from having any (oral, written, personal or other) form of contact or communication with:

(X) (✓) Victim

(✓) Other (list names)
All locations
Family members Household members & Bus. Assoc.

(✓) Defendant is prohibited from making or causing anyone else to make harassing communications to:

(X) (✓) Victim

* * *

(X) (✓) Defendant is prohibited from stalking, following, or threatening to harm, to stalk or to follow:

(✓) Victim

(✓) Others (list names)
Family & Household members & Bus. Assoc.

A VIOLATION OF ANY OF THE PROVISIONS LISTED IN PART I OF THIS ORDER MAY CONSTITUTE CRIMINAL CONTEMPT PURSUANT TO N.J.S.A. 2C:29-9(b), AND WILL RESULT IN DEFENDANT'S ARREST AND CRIMINAL PROSECUTION, AS WELL AS A POSSIBLE JAIL SENTENCE.

* * *

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A VIOLATION OF ANY OF THE PROVISIONS LISTED IN PART II OF THIS ORDER MAY CONSTITUTE EITHER CIVIL OR CRIMINAL CONTEMPT PURSUANT TO N.J.S.A. 2C:25-30 AND MAY RESULT IN DEFENDANT'S ARREST, PROSECUTION, AND POSSIBLE INCARCERATION, AS WELL AS THE IMPOSITION OF A FINE OR JAIL SENTENCE.

* * *

COMMENTS

Deft brought over from County Jail. Deft enterred [sic] a NOT guilty plea. After Hearing testimony the court finds deft guilty of Domestic Violence Specifically Harassment.

Numerous letters & documents & police report p-17 were submitted to the court and marked into evidence P1- through P-17.

This Order is to become effective immediately and shall remain in effect until further Order of the Superior Court, Chancery Division, Family Part.

All Municipal, County, State Police and Sheriff's Officers will serve and fully enforce this ORDER.

7/10/96
DATE

s/ Joseph P. Testa
JOSEPH P. TESTA
Honorable

Appendix D

THIS ORDER CANNOT BE CHANGED BY EITHER PARTY WITHOUT OBTAINING A WRITTEN COURT ORDER. IF YOU WISH TO CHANGE THE TERMS OF THIS ORDER, AND/OR YOU RESUME LIVING TOGETHER, THE PLAINTIFF MUST APPEAR BEFORE THIS COURT FOR A REHEARING. HOWEVER, THE PLAINTIFF SHALL NOT BE ARRESTED FOR A VIOLATION OF THIS RESTRAINING ORDER.

* * * *

APPENDIX E — ORDER OF THE SUPREME COURT OF NEW JERSEY DENYING PETITION FOR CERTIFICATION AND DISMISSING APPEAL DATED AND FILED OCTOBER 31, 2000

SUPREME COURT OF NEW JERSEY
C-287 September Term 2000
50,085

CARROLL CHRISTY,

Plaintiff-Respondent,

v.

DOUGLAS SLOAN, et al.,

Defendants-Petitioners.

ON PETITION FOR CERTIFICATION

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-238-97 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs; and it is further

ORDERED that the appeal filed in the within matter is dismissed pursuant to *Rule* 2:12-9.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 31st day of October, 2000.

s/ Stephen W. Townsend
CLERK OF THE SUPREME COURT